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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,173	12/19/2001	Christopher Peter Olson	KCC-16,444	6341
45736 7590 06/10/2008 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 06/10/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

Office Action Summary

Application No.

10/025,173

Applicant(s)

OLSON ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-34 is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-16, 35-43, 46-62, 64-67 is/are rejected.
- 7) ☒ Claim(s) 12, 13, 44, 45 and 63 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4,6,7.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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DETAILED ACTION

Claim Interpretation

1. Claim 1 recites the limitation "the disposable absorbent article having an absorbent capacity of less than three times an anticipated single insult volume". Applicant discloses in the specification, page 22, line 14 through page 23, line 13, a single insult volume of 30 ml to 180ml and an absorbent capacity of 30 grams to about 400 grams. Based on applicant's disclosure, the examiner interprets the above mentioned portion of the claim as being limited to an absorbent article with an absorbent capacity of about 400 grams or less.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 2, 5, 7-11, 51, 52, and 55-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesco-Cancian USPN 6168585.

As to claims 1, 9-11, 51, and 58-61, Cesco-Cancian discloses a low capacity disposable absorbent article comprising: an outer cover **22** (moisture barrier is **60**), a body side liner **62**, and an absorbent pad **64** positioned between the outer cover and the body side liner. The absorbent pad has a thickness of less than about 2.0 mm (col. 6, lines 49-51).

Cesco-Cancian discloses the present invention except for the initial dry thickness of the absorbent garment. Even though Cesco-Cancian is mainly concerned with the thickness of the absorbent pad, the disclosure teaches an overall thinness dimension to the training pant is desired (col. 2, lines 2-8; col. 6, lines 47-49). Cesco-Cancian does not disclose the exact dimension of the absorbent garment. It is evident that Cesco-Cancian has a value for the initial dry thickness of the absorbent garment. Cesco-Cancian recognizes the bulk of the absorbent pad can be varied and this will affect overall thickness of the absorbent garment (col. 6, lines 47-51). Cesco-Cancian, therefore recognizes the initial dry thickness of the absorbent garment is a result effective variable of initial dry thickness of the absorbent pad. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Cesco-Cancian with the claimed thickness of the absorbent garment, since

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discovering an optimum value of a result effective variable involves only routine skill in the art.

Cesco-Cancian discloses the absorbent pad has an overall absorbent capacity of at least about 300 grams (col. 6, lines 53-56), which by applicant's definition of a single insult volume as discussed above in the claim interpretation section, reads on the limitations of less than twice or three times an anticipated single insult volume.

As to claims 2 and 52, Cesco-Cancian discloses the absorbent pad comprises superabsorbent and fluff pulp (col. 11, line 60 through col. 12, line 28).

As to claims 5 and 55, see col. 12, lines 33-38.

As to claims 7 and 56, Cesco-Cancian discloses the absorbent pad has an initial dry thickness less than about 1.5 mm (col. 6, lines 49-51).

As to claims 8 and 57, Cesco-Cancian discloses the absorbent pad has an initial dry thickness less than about 1.0 mm (col. 6, lines 49-51).

5. Claims 1-11, 14-16, 35-43, 46-60, 62, and 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al. USPN 5562645 in view of Osborn, III et al. USPN 5007906.

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As to claims 1, 9-11, 51, and 58-60, Tanzer discloses a disposable absorbent article comprising: an outer cover **30**, a body side liner **28**, and an absorbent pad **32** positioned between the outer cover and the body side liner. The absorbent pad has a thickness of less than about 2.0 mm (col. 20, lines 55-63).

Tanzer discloses an overall thinness dimension to the training pant is desired (col. 20, lines 55-63).

Tanzer does not specifically disclose the absorbent article has a combined thickness of less than about 3 millimeters because Tanzer is silent on the thickness dimensions of the cover and barrier layers. However, the thickness of a cover layer and barrier layer is nominal so that it does not significantly affect the entire thickness of the sanitary napkin when the three components are combined. For instance, Osborn discloses a topsheet with a thickness of 0.01 to about 0.05 mm (Osborn col. 4, lines 8-14) and a backsheet with a thickness of 0.01-0.05 mm (Osborn col. 4, lines 47-52). The combination of the absorbent system of Tanzer and the topsheet and backsheet of Osborn would create a sanitary napkin with a thickness of no more than 2.64 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sanitary napkin of Tanzer with a topsheet and backsheet with a thickness as disclosed in Osborn. Doing so would provide a thin absorbent article, which Tanzer teaches is desired (Tanzer col. 20, lines 55-63).

Tanzer/Osborn discloses the absorbent pad has an overall absorbent capacity of at least about 300 grams (Tanzer, Abstract), which by applicant's definition of a single

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insult volume as discussed above in the claim interpretation section, reads on the limitations of less than twice or three times an anticipated single insult volume.

As to claims 2 and 52, Tanzer/Osborn discloses the absorbent pad comprises superabsorbent and fluff pulp (Tanzer col. 2, lines 30-33 and Figure 4).

As to claims 3 and 53, Tanzer/Osborn discloses the absorbent comprises multiple layers of superabsorbent (Tanzer, col. 12, lines 60-64 where Tanzer discloses the surge layer also comprises superabsorbent material).

As to claims 4 and 54, Tanzer/Osborn discloses the absorbent pad comprises at least two different superabsorbent materials, which are located in a different location within the pad (Tanzer, col. 18, lines 45-49).

As to claims 5 and 55, see Tanzer col. 18, lines 30-41.

As to claim 6, Tanzer/Osborn discloses a surge layer between the absorbent pad and the body side liner (Tanzer col. 4, lines 31-40 and Figure 2).

As to claims 7 and 56, Tanzer/Osborn discloses the absorbent pad has an initial dry thickness less than about 1.5 mm (Tanzer col. 20, lines 55-63).

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As to claims 8 and 57, Tanzer/Osborn discloses the absorbent pad has an initial dry thickness less than about 1.0 mm (Tanzer col. 20, lines 55-63).

As to claims 14-16 and 65-67, Tanzer/Osborn discloses the absorbent structure has a basis weight of 300 gsm (Tanzer col. 3, lines 50-51). Tanzer/Osborn further disclose claimed thickness and absorbent capacity of the pad (see rejection of claims 1 and 51 above). Therefore, since the characteristics of the pad of Tanzer/Osborn is similar to the characteristics of the pad of the claimed invention, one having ordinary skill in the art would be able to determine through routine experimentation the ideal levels total mass necessary for a particular application. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

As to claims 35, 42, and 43, Tanzer discloses a disposable absorbent article comprising: a chassis defining a waist opening and first and second leg openings; the chassis including an outer cover **30**, a body side liner **28**, and an absorbent pad **32** positioned between the outer cover and the body side liner. The absorbent pad has a thickness of less than about 2.0 mm (col. 20, lines 55-63).

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Tanzer discloses an overall thinness dimension to the training pant is desired (col. 20, lines 55-63).

Tanzer does not specifically disclose the absorbent article has a combined thickness of less than about 3 millimeters because Tanzer is silent on the thickness dimensions of the cover and barrier layers. However, the thickness of a cover layer and barrier layer is nominal so that it does not significantly affect the entire thickness of the sanitary napkin when the three components are combined. For instance, Osborn discloses a topsheet with a thickness of 0.01 to about 0.05 mm (Osborn col. 4, lines 8-14) and a backsheet with a thickness of 0.01-0.05 mm (Osborn col. 4, lines 47-52). The combination of the absorbent system of Tanzer and the topsheet and backsheet of Osborn would create a sanitary napkin with a thickness of no more than 2.64 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sanitary napkin of Tanzer with a topsheet and backsheet with a thickness as disclosed in Osborn. Doing so would provide a thin absorbent article, which Tanzer teaches is desired (Tanzer col. 20, lines 55-63). Tanzer/Osborn disclose a saturated capacity of 55 grams (Tanzer col. 13, lines 65-67), which is about 90% to about 150% of an anticipated single insult volume as defined by applicant's disclosure (Applicant discloses in the specification, page 22, line 14 through page 23, line 13, a single insult volume of 30 ml to 180ml).

As to claim 36, Tanzer/Osborn discloses the absorbent pad comprises superabsorbent and fluff pulp (Tanzer col. 2, lines 30-33 and Figure 4).

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As to claim 37, Tanzer/Osborn discloses the absorbent comprises multiple layers of superabsorbent (Tanzer, col. 12, lines 60-64 where Tanzer discloses the surge layer also comprises superabsorbent material).

As to claim 38, Tanzer/Osborn discloses the absorbent pad comprises at least two different superabsorbent materials, which are located in a different location within the pad (Tanzer, col. 18, lines 45-49).

As to claim 39, see Tanzer col. 18, lines 30-41.

As to claim 40, Tanzer/Osborn discloses the absorbent pad has an initial dry thickness less than about 1.5 mm (Tanzer col. 20, lines 55-63).

As to claim 41, Tanzer/Osborn discloses the absorbent pad has an initial dry thickness less than about 1.0 mm (Tanzer col. 20, lines 55-63).

As to claims 46, Tanzer/Osborn discloses the absorbent pad has an overall absorbent capacity of at least about 300 grams (Tanzer, Abstract), which by applicant's definition of a single insult volume as discussed above in the claim interpretation section, reads on the limitations of less than twice or three times an anticipated single insult volume.

As to claim 47, Tanzer/Osborn discloses the absorbent garment of comprises a child training pants (Tanzer, col. 3, lines 9-11). Regarding the limitation of a "single insult training pant", this limitation is directed to an intended use of the article. Intended

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use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Tanzer/Osborn meets the structural limitations of independent claim 35, and therefore the article is capable of being used for a single insult.

As to claims 48-50, Tanzer/Osborn discloses the absorbent structure has a basis weight of 300 gsm (Tanzer col. 3, lines 50-51). Tanzer/Osborn further disclose claimed thickness and absorbent capacity of the pad (see rejection of claims 1 and 51 above). Therefore, since the characteristics of the pad of Tanzer/Osborn is similar to the characteristics of the pad of the claimed invention, one having ordinary skill in the art would be able to determine through routine experimentation the ideal levels total mass necessary for a particular application. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

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As to claims 62 and 64, Tanzer/Osborn disclose a saturated capacity of at least 7 grams/gram and at least 12 grams/gram (Tanzer col. 13, lines 65-67).

Allowable Subject Matter

6. Claims 17-34 are allowed.

7. Claims 12, 13, 44, and 45, and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claims 12, 13 and 17-34, 44, and 45, the following is a statement of reasons for the indication of allowable subject matter: The overall claimed combination of a disposable article having an absorbent capacity of less than three times an anticipated single insult volume in combination with less than 15% insult liquid volume runoff when the article is insulted with the anticipated single insult volume is neither anticipated nor rendered obvious by the prior art of record.

The claim(s) are considered definite because the examiner cannot show by clear and convincing evidence that one of ordinary skill in the art upon consulting the specification would not be able to determine the scope of the claim(s). See in general; W.L. Gore & Associates 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. Denied, 496 U.S. 851 (1984).

The claim(s) are considered patentable over the prior art of record as the examiner cannot show by clear and convincing evidence that the functional or

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characteristic limitation claimed necessarily flows and/or is inevitably present in the teachings of the prior art of record. There are other attributes undisclosed in the prior art that necessarily affect the functional or characteristic claimed; therefore, the application of prior art is not warranted. See *Ex parte Latimore*, (Bd. Pat. App. & Inter. 3/21/1994), *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Primary Examiner
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